



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0471]

RIN 1625-AA00

Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the navigable waters of Gerritsen Inlet surrounding the Belt Parkway Bridge. This proposed rule would allow the Coast Guard to prohibit all vessel traffic through the safety zone during bridge replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life in the regulated area during the construction of the Bridge.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast

Guard on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker, Coast Guard Sector New York, Waterways Management Division; telephone (718) 354-4195, email jeff.m.yunker@uscg.mil or Chief Craig Lapiejko, Coast Guard First District Waterways Management Branch, telephone (617) 223-8351, email craig.d.lapiejko@uscg.mil. If you have questions on viewing or submitting material to the docket, call

Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is

received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-0471] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0471) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West

Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

In a letter received by the Coast Guard on May 16, 2013 the New York City Department of Transportation (NYC DOT) and their contractors outlined the first five phases of operations that require in-channel work in the construction and demolition of Belt Parkway Bridge. There is no previous regulatory action for

this Bridge.

C. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones. This purpose of this proposed rulemaking is to ensure the safety of vessels and workers from hazards associated with the bridge construction operations in the regulated area.

A navigation safety situation created by construction of the new Belt Parkway Bridge and removal of the current Belt Parkway Bridge prompted the proposed rule. This bridge carries the Shore Parkway (also referred to as the Belt Parkway) over Gerritsen Inlet. The current Belt Parkway Bridge was built in 1940 and no longer meets current federal and state safety standards. The New York City Department of Transportation (NYC DOT) has contracted China Construction U.S. and J. T. Cleary Inc. to construct a new fixed replacement bridge and remove the current fixed bridge. Construction is scheduled to begin September 15, 2013. Scheduled completion of the new bridge and removal of the old bridge is 2017.

The Coast Guard has discussed this project with NYC DOT, China Construction U.S., and J.T. Cleary Inc. to determine

whether the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project would not require waterways closures, there are certain tasks that can only be completed in the channel and will require closing the waterway.

Specifically, installed heavy steel support beams will be built on land, and then floated by barge to the site. These steel beams will then be lifted and installed in two new bridge piers that will support the new bridge and roadway. The current bridge and support piers will be dismantled into small sections and placed on a barge for removal from the construction site. These two processes will be complex and present many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned in the channel with a restricted ability to maneuver.

The Coast Guard received a letter on May 16, 2013, in which the contractors outlined the first five phases of operations that require in-channel work, one of which will require two waterway closures. NYC DOT will notify the Coast Guard as far in advance as possible if additional closures are needed.

D. Discussion of Proposed Rule

The Coast Guard's proposed rule would give the Captain of

the Port New York (COTP) the authority to prohibit vessel traffic on this portion of Gerritsen Inlet when necessary for the safety of vessels and workers during construction work in the channel. The Coast Guard would close the designated area to all traffic during any circumstance, planned or unforeseen, that pose an imminent threat to waterway users or construction operations in the area. Complete waterway closures would be minimized to that period absolutely necessary and made with as much advanced notice as possible. During closures there would not be enough space for mariners to transit through the safety zone between the construction vessels and the current bridge piers. The COTP would cause notice of enforcement to be made by appropriate means and ensure the widest distribution among the affected segments of the public.

Initial enforcement periods are currently anticipated to be from December 1, 2013 to February 28, 2014 and from May 1, 2014 to June 30, 2014. The purpose of these closures is to float in steel beams for the new bridge piers to be installed by a floating crane barge. The crane barge and supply barge carrying the steel beams will take up the width of the channel, causing a closure of the channel. Once the barges are in place and the installation of the steel beams begins the barges cannot move out of the channel. To minimize impacts to boaters upstream of the bridge the contractor will only conduct these operations on

weekdays from Monday at 6 a.m. until Friday at 7 p.m.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: Vessel traffic would only be restricted from the safety zone during weekdays, recreational boaters would still be able to transit the safety zone on weekends, the first closure would be during the winter months when recreational boating is severely limited due to local weather conditions, and the second closure would be early in the recreational boating season that traditionally begins around the Memorial Day weekend in late

May.

Advanced public notifications would also be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners and at <http://homeport.uscg.mil/newyork> which would allow the public an opportunity to plan for these closures.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within, or upstream of the safety zone during a vessel restriction period.

The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will be of limited size and most

waterway closures will be during times of reduced recreational boating traffic. The contractor has hired outreach consultants to ensure local interests are regularly notified of the project status and future impacts that can be expected. Additionally, before the effective period of a waterway closure, notifications will be made to local mariners through appropriate means.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State,

local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves restricting vessel movement within a safety zone. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination

is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and record keeping requirements, waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0471 to read as follows:

§165. T01-0471 Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY.

(a) Location. The following area is a safety zone: All navigable waters of Gerritsen Inlet: Southeast of a line from 40°35'09.46"N, 073°54'53.92"W to 40°35'10.0"N, 073°54'44.5"W and Northwest of a line from 40°35'04.88"N, 073°54'45.43"W to 40°35'10.34"N, 073°54'35.71"W. (NAD 83)

(b) Definitions. The following definitions apply to this section:

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(c) Enforcement Periods.

(1) This rule is enforceable from December 1, 2013 through September 30, 2017.

(2) The COTP will give notice of enforcement by appropriate means to inform the affected segments of the public, and such notification will include dates and times. Means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

(d) Regulations.

(1) The general regulations contained in 33 CFR 165.23, as

well as the following regulations, apply.

(2) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or the COTP's designated representative.

(3) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed.

Dated: October 23, 2013

G. Loeb1,
Captain, U.S. Coast Guard
Captain of the Port New York

[FR Doc. 2013-28589 Filed 11/27/2013 at 8:45 am; Publication
Date: 11/29/2013]